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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FRANKLIN GERARDO ALEXANDER AGUILAR PEREZ

Petitioner,

v.

Gregory Archambeault, Enforcement and Removal Operations San Diego Field Office Director, U.S. Immigration and Customs Enforcement; Todd Lyons, Acting Director of Immigration and Customs Enforcement; Markwayne Mullin, Secretary, U.S. Department of Homeland Security; Sixto Marrero, warden at Imperial Regional Detention Facility; Todd Blanche, Acting Attorney General; U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement;

Respondents.

Civil Case No. '26CV4348 JO BJW

COMPLAINT AND PETITION FOR WRIT OF HABEAS CORPUS AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner Franklin Gerardo Alexander Aguilar Perez ("Mr. Aguilar" or "Petitioner") is a 19-year-old national of Guatemala. Mr. Aguilar entered the United States without inspection as a 16-year-old unaccompanied minor on or about March 11, 2023. The government issued him a Notice to Appear, placed him in the custody of the Office of Refugee Resettlement ("ORR"), and released him to his mother on March 24, 2023. Mr. Aguilar's father filed a U-visa application in 2018 with Mr. Aguilar as a derivative beneficiary. Mr. Aguilar's father received a bona fide U-visa determination and the government issued his father deferred action and employment authorization. Mr. Aguilar's applications remain pending.

2. On or about May 1, 2026, Respondents detained Mr. Aguilar when he was a passenger in a car on route to work in Florida Keys, Florida. Immigration agents took Mr. Aguilar to Broward Transitional Center. They then transferred Mr. Aguilar to the custody of Respondents at Imperial Regional Detention Facility. He now faces unlawful detention because the Respondents concluded he is subject to mandatory detention.

3. Mr. Aguilar is charged with, inter alia, having entered the United States without admission or inspection and for not being in possession of a valid document. *See* 8 U.S.C. § 1182(a)(6)(A)(i) and §1182(a)(7)(A)(i)(I).

4. On September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Mr. Aguilar's detention on this basis violates the plain language of the INA. Section 1225(b)(2)(A) does not apply to individuals like Mr. Aguilar who previously entered and have continuously resided in the United States for more than two years. Instead, such individuals are subject to a different statute, Section 1226(a), that allows for

release on conditional parole or bond, and requires an individualized determination upon arrest. That statute expressly applies to people who, like Mr. Aguilar, are charged as inadmissible for having entered the United States without inspection.

6. Mr. Aguilar's confinement is unlawful due to the misinterpretation of Section 1225(b)(2). Mr. Aguilar's detention is particularly egregious given his prior release and current pending application for a U-visa. Accordingly, he brings this petition seeking immediate and unconditional release to vindicate his constitutional rights. He also asks this court to enjoin his transfer outside of the Eastern District of California (the "District"). *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2nd Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)).

7. Mr. Aguilar requests injunctive relief and a temporary restraining order. Mr. Aguilar will not submit additional briefing per this District's Chief Judge Order No. 144.[1]

JURISDICTION AND VENUE

8. This case arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*; U.S. Const. art. I, § 9, cl. 2, 28 U.S.C. § 1331, 28 U.S.C. § 1346, and 28 U.S.C. § 1651.

10. The Court may grant relief under 28 U.S.C. § 2241, *et seq.*; 28 U.S.C. § 2201, *et seq*28 U.S.C. § 1651; and the Court's inherent equitable powers.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States, Respondents reside in this District, and because Petitioner is detained in this District. *See Rumsfeld v. Padilla*,

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[1] *In re Standard Procedures for Immigration Habeas Petitions*, CJO No. 144 (U.S. Dist. Court for the S. Dist. of Cal. Mar. 10, 2026). *Available at* https://www.casd.uscourts.gov/_assets/pdf/rules/CJO%20144_Standard%20Procedures%20for%20Immigration%20Habeas.pdf

542 U.S. 426, 428 (2004) ("[T]he traditional rule has always been that habeas relief is issuable only in the district of confinement...").

PARTIES

12. Petitioner Aguilar is a 19-year-old Guatemalan young man who was detained by immigration agents near Florida Keys, Florida on about May 1, 2026. Respondents detain Mr. Aguilar at the Imperial Regional Detention Facility.

13. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). As such, Todd Lyons is responsible for Mr. Aguilar's detention and removal. Respondent Lyons is sued in his official capacity.

14. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS). He is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Mr. Aguilar's present DHS detention. Respondent Mullin has ultimate custodial authority over Mr. Aguilar and is sued in his official capacity.

15. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. He is sued in his official capacity.

16. Respondent Gregory Archambeault is the Field Office Director of the San Diego Field Office of ICE Enforcement Removal Operations.

17. Respondent Sixto Marrero is the Warden of the Imperial Regional Detention Facility. He is Mr. Aguilar Perez's immediate custodian.

18. Respondent DHS is a federal executive agency responsible for, among other things, enforcing federal immigration laws and overseeing lawful immigration to the United States.

19. Respondent ICE is the federal executive agency responsible for the enforcement of immigration laws, including the arrest, detention, and removal of noncitizens.

EXHAUSTION

20. Petitioner is not required to exhaust administrative remedies because doing so would be futile. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Velazquez-Beltran v. Noem,* 2026 WL 524056 at *2 (S.D. Cal. Feb. 25, 2026.)

21. Such exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

22. Petitioner's case meets every requirement. Not only will he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but an administrative appeal would be futile and unable to provide a genuine opportunity for adequate relief. Courts in this District have held that exhaustion of administrative remedies would be futile in these circumstances. *See, e.g., Velazquez-Beltran v. Noem*, 2026 WL 524056 at *2; *Garcia v. Noem*, 803 F. Supp. 3d 1064, 1074 (S.D. Cal. 2005).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

23. Petitioner Franklin Gerardo Alexander Aguilar Perez is a 19-year-old Guatemalan national who entered the United States as an unaccompanied child, at the age of 16, on or about March 11, 2023. *See* Declaration of Brisa Velazquez Oatis ("Velazquez Oatis Decl."), Exhibit "A," at 1, Notice to Appear. He was placed in the custody of the Office of Refugee Resettlement ("ORR") until about March 24, 2023. *See* Velazquez Oatis Decl., Exhibit "B," ORR, Division of Unaccompanied Children Operations, Verification of Release.

24. After considering the "[g]eneral principles that apply to the care and placement of unaccompanied children," which include whether Mr. Aguilar was a danger to the community or a flight risk, ORR released him to the care of his sponsor (his mother).

See 45 CFR Section 410.1003(f); *see* Velazquez Oatis Decl., Exhibit "C, Petitioner Franklin Aguilar's Sworn Declaration).

25. Mr. Aguilar resided with his parents and two younger U.S. citizen sisters in Homestead, Florida and regularly attended church until his arrest. *Id.*

26. Mr. Aguilar has a derivative application for U-visa status pending before the United States Citizenship and Immigration Services ("USCIS") since July 13, 2018. *See* Velazquez Oatis Decl., Exhibit "D," Forms I-797C, Notice of Action, I-918A, I-918A Correspondence on Deferred Action, I-192, and I-765 (c)(14) Receipt Notices. He also has a form I-192, Application for Advance Permission to Enter as a Nonimmigrant, pending to waive any inadmissibility grounds applicable to him. *See id.* Mr. Aguilar's father and mother each received bona fide determinations of the underlying U-visa petition of which Mr. Aguilar is a derivative beneficiary. Mr. Aguilar's father and mother received deferred action and employment authorization documents. *See* Velazquez Oatis Decl., Exhibit "E," I-918 and I-918A Bona Fide Determination and Deferred Action Notices. Mr. Aguilar was not immediately granted deferred action because USCIS was unaware that he was no longer abroad, but he submitted an amendment to confirm his U.S. residence. *See* Velazquez Oatis Decl., Exhibit "F," I-797 Receipt Notice. Mr. Aguilar awaits determination of his applications.

27. On May 1, 2026, Mr. Aguilar was a passenger in a vehicle in Florida Keys, which was stopped by immigration agents. Immigration agents arrested Mr. Aguilar and several coworkers and detained him at Broward Transitional Detention Center in Florida. Within days, they transferred Mr. Aguilar to the Imperial Regional Detention Facility where he remains. *See* Velazquez Oatis Decl., Exhibit "G, Notice EOIR: Alien Address.

28. The government charged Mr. Aguilar with, inter alia, having entered the United States without admission or inspection and for not being in possession of a valid document. See 8 U.S.C. § 1182(a)(6)(A)(i) and §1182(a)(7)(A)(i)(I). *See* Velazquez Oatis Decl., Exhibit "H," Notice to Appear Dated May 1, 2026. His latest Notice to Appear no longer includes a charge of not being in possession of lawful documents. *See* Velazquez

Oatis Decl., Exhibit "I,", Notice to Appear dated June 18, 2026. At no time following Mr. Aguilar's arrest did immigration agents give any individualized reason for his detention or assess his flight risk.

29. No circumstances have changed that make Mr. Aguilar a flight risk or danger to the community since the government released him from custody after his arrival. *See* Velazquez Oatis Decl., Exhibit "J," Florida Department of Law Enforcement, State of Florida Criminal History Record Check, dated May 28, 2026. ICE has not claimed any such change in circumstances.

30. EOIR denied Mr. Aguilar's request for custody redetermination because "Respondent entered without inspection and is subject to mandatory detention under INA section 235(b) as an applicant for admission. Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) applies." *See* Velazquez Oatis Decl., Exhibit "K", US DOJ, EOIR Imperial Immigration Court Order of the Immigration Judge.

31. Mr. Aguilar's immigration attorney, Michelle Obando, has appeared for him in removal proceedings. Ms. Obando submits a declaration in support of Mr. Aguilar Perez' petition for writ of habeas corpus. *See* Velazquez Oatis Decl., Exhibit "L," Sworn Declaration of Michelle Obando.

LEGAL FRAMEWORK

A. Immigration Detention Framework

32. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

33. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

34. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

35. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C.§ 1226(a)(2)(A)–(B).20.

36. Under the Section 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see, e.g., Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If, after an individualized consideration, ICE chooses to detain the noncitizen under Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

37. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

38. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen]

shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

39. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection, but who were already in the United States at the time of an ICE arrest, were historically detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 287-89.

40. On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy[2] that rejected well-established understanding of the statutory framework and reversed decades of practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

41. Since Respondents adopted their new policy, the vast majority of district courts that have confronted this issue have found that Section 1226(a) applies in these circumstances, and that the government's current position contradicts the text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice. *See, e.g.*, *Martinez Zayas v. Gordon*, 2026 WL 266275 at *2 (S.D. Cal. Jan. 30, 2026); *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 939 (N.D. Cal. 2025).

42. Courts have rejected DHS's and EOIR's new interpretation because it defies the INA. The government's recently adopted position also ignores the text of § 1225(b)(2).

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[2] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez Zayas v. Gordon*, 2026 WL 266275 at *2 (S.D. Cal. Jan. 30, 2026). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

43. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (WDWA 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after Illegal Immigration Reform and Immigration Responsibility Act enactment, the former Immigration and Naturalization Service and EOIR issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

44. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government

interpretation and practice to reject government's new proposed interpretation of the law at issue).

45. On January 29, 2025, the Laken Riley Act amendments to § 1226, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained under § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

46. Petitioner was arrested after more than two years of continuous presence in the United States, not while "seeking admission." Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) exceeds statutory authority.

B. Petitioner's Detention Violates Protections Established for U-visa Applicants

47. U-visa applicants with a bona fide application awaiting final adjudication by USCIS are eligible for work authorization, which entails permission to remain in the United States and, therefore, deferred action. 8 U.S.C. § 1184(p)(6). According to ICE's own longstanding guidance,[3] U-visa applicants should be protected against detention and deportation to promote support for victims of crimes, such as U-visa applicants. Recently, courts have found that detention or removal of people in this situation violates due process. *See*

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[3] *See* ICE Directive No. 11005.3, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021). *See* Velazquez Oatis Decl., Exhibit "M", tps://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVictims.pdf.

ICWC v. Noem, 2026 WL 1455004, *40-*41 (C.D. Cal. May 20, 2026). In *ICWC v. Noem*, plaintiffs challenged the 2025 Guidance[4], which repealed ICE's longstanding policy of refraining the use of immigration enforcement against persons with victim-based applications, including U-visa applicants. *Id.* at *1.

48. Plaintiffs argued that the government's conduct was unlawful, in violation of immigration laws and regulations and the U.S. Constitution, specifically because Congress had created this framework through immigration laws and regulations to provide noncitizen survivors of serious crimes a pathway to permanent residence and to encourage survivors to report crimes and seek assistance. *Id.* at *2. The district court certified three nationwide classes and temporarily enjoined ICE from detaining survivors with pending T-visa, VAWA, or U-visa petitions. *Id.* at *46-*47. The certification includes derivative beneficiaries. The district court also stayed ICE's policy of unilaterally revoking deferred action status to these petitioners by detaining and removing them while in valid periods of deferred action. *Id.* at *47.

49. Petitioner falls squarely into the class of U-visa applicants and derivative beneficiaries with pending petitions. In the instant case, Petitioner's father submitted a U-visa application and Petitioner is a derivative beneficiary of that application. That U-visa application is still pending, but USCIS already made a bona fide determination on Mr. Aguilar's father's U-visa application and issued Petitioner's parents deferred action and employment authorization in July 2023. USCIS did not issue Petitioner deferred action because it believed that he was still abroad. In December 2024, Petitioner submitted an amendment to the U-visa petition informing Respondents that he was in fact in the country and he also requested employment authorization along with an application to waive

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[4] *See* ICE Policy No. 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025). *See* Velazquez Oatis Decl., ("2025 Guidance" or Exhibit "N"), https://www.ice.gov/doclib/foia/policy/11005.4.pdf.

inadmissibility grounds applicable to him. Petitioner's request for a bona fide determination, deferred action, and relevant applications are still pending.

50. Because Petitioner was detained under an unlawful policy that is enjoined, Petitioner is thus entitled to immediate release. By continuing to detain Petitioner after the *ICWC* order established the unlawfulness of Petitioner's detention, Respondents are violating that order every day that Petitioner remains detained. For this reason alone, Petitioner is likely to succeed on the merits of his habeas petition. Petitioner should be immediately released.

C. An Unaccompanied Minor's Release Creates a Liberty Interest and a Finding that Petitioner was Neither a Flight Risk Nor a Danger to the Community

51. Because Mr. Aguilar entered the United States as an unaccompanied minor and then released under the Trafficking Victims Protection Reauthorization Act (TVPRA), he has a strong liberty interest. Courts have found that a petitioner has a protected liberty interest where the government released him pursuant to the TVPRA. *F.S.S.M. v. Wofford*, No. 1:25-CV-01518-TLN AC, 2025 WL 3526671, at *5 (E.D. Cal. Dec. 9, 2025).

52. "[C]ivil immigration detention is permissible only to prevent flight or protect against danger to the community." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The TVPRA mandates that the government place unaccompanied minors in the "least restrictive setting" possible, in the best interests of the child. *Cornejo v. Andrews,* 823 F. Supp. 3d 1085, 1094 (E.D. Cal. 2026). And in releasing Petitioner, ORR concluded that he was neither a flight risk nor a danger to the community. Reasons for detention are limited to avoid punitive removal practices. In addition, once a person has been ordered released and is complying with the conditions of supervision, ICE has no legitimate interest in re-detaining the individual.

D. Due Process Constraints

53. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the

United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

54. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *1 (W.D.N.Y. 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)). Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *14 (W.D.N.Y. 2025).

a. Procedural Due Process

55. "A procedural due process claim has two elements: '(1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections.'" *Miranda v. City of Casa Grande*, 15 F.4th 1219, 1224 (9th Cir. 2021) (citation omitted). The Constitution "usually . . . requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

56. For one, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Second, procedural protections are needed before depriving someone of their liberty including an individualized determination. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it

cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *1 (W.D.N.Y. 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

57. In the context of immigration detention due process claims, courts in the Ninth Circuit apply the three-factor balancing test set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976) to determine what due process requires. *See, e.g., Rodriguez-Diaz v. Garland,* 53 F.4th 1189, 1207 (9th Cir. 2022). These factors are: (i) the private interest that will be affected by the official action; (ii) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (iii) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.*

58. In light of a noncitizen's due process rights, the procedural rights conferred by Section 1226(a), and the implementing regulations, the government's decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and danger to the community. *See Kelly v. Almodovar*, 2025 WL 2381591, at *3 (S.D.N.Y. 2025); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10.

59. First, Mr. Aguilar had a liberty interest in his freedom because the government released him under the TVPRA. Courts have established that individuals released under the TVPRA have a protected liberty interest. *F.S.S.M.,* 2025 WL 3526671, at *5.

60. Second, Respondents denied Mr. Aguilar adequate procedural protections including failure to receive notice, a hearing as to the termination of his liberty interest, and individual determination as to a changed circumstance that would make him a danger to the community or flight risk pre-deprivation of his liberty.

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i. Liberty Interest

61. Under the *Mathews* rubric, the first factor is met both because Mr. Aguilar is an "unaccompanied minor" with a protected liberty interest post-release under the TVPRA as discussed above and because freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (finding noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

62. As discussed, Mr. Aguilar's liberty interest has been established because he was released under the TVPRA. *See F.S.S.M.*, 2025 WL 3526671, at *5. Additionally, Mr. Aguilar also has a liberty interest in protection from detention and deportation as an individual who relied on the policy protections intended for U-visa applicants, as affirmed in *ICWC*.

ii. Risk Of Erroneous Deprivation

62. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Due process also requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

63. Respondents neither notified or provided Mr. Aguilar was neither a time to be heard prior to being re-detained nor an individualized determination of this flight risk.

64. Courts in this district and beyond have concluded that there is a high risk of erroneous deprivation of this liberty interest when noncitizens are re-detained without a

pre-deprivation hearing. *Fanfan v. Noem,* No. 3:25-cv-03291-DMS-BJW, 2025 WL 3563739, at *6 (S.D. Cal. Dec. 12, 2025).

65. The requirement of an individualized determination is particularly strong in cases of re-detention because the prior "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *see also* 8 C.F.R. 1236.1(c)(8) (outlining requirements for release on recognizance); 8 C.F.R. 212.5(b) (outlining requirements for parole).

66. "[T]o be lawful" the re-detention "must be based on evidence that the circumstances relevant to that original release decision have changed." *Saravia*, 280 F. Supp. 3d at 1196. "To satisfy due process, those changed circumstances must represent individualized legal justification for detention." *Sanchez v. LaRose*, No. 25-CV-2396-JED-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025)

67. Respondents did not provide a pre-deprivation process to determine whether Mr. Aguilar's loss of liberty was justified. The government had already concluded that Mr. Aguilar was neither a flight risk nor a danger to the community when it released him via TVPRA and circumstances have not changed to represent a legal justification for detention.

iii. Government Interest

68. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690.

69. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. For instance, in *Sosnava Rodriguez v. Sylvester Ortega,* the

court held that detaining noncriminal, long-term noncitizens for indefinite and extensive periods without an individualized determination of flight risk at a bond hearing violates the Fifth Amendment. 2026 WL 1910255 at *3 (5th Cir. July 2, 2026). Where, as in this case, the individual has resided with his family since he was 16 years old, does not have a criminal history, and has strong familial and religious community ties that would not make him a flight risk and does not present a danger or security risk. *See* Velazquez Oatis Decl., Exhibit C.

70. More importantly, the government can claim no interest in re-detention where there are no changed circumstances going to flight risk or danger. *See Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, at 1036 (N.D. Cal 2025) ("The government does not claim that any material circumstances have changed that would warrant reassessment of Pinchi's risk of flight or dangerousness, and it has articulated no other reason for her detention."); *Fanfan,* 2025 WL 3563739, at *3 ("When the Government has previously decided to release a noncitizen and there is no evidence in the record of any changed circumstance that might have caused the Government to reconsider its initial decision to release the noncitizen ... the Government's interest in re-detention is low.") (citing *Doe v. Chestnut,* No. 1:25-cv-01372 CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26, 2025).

37. Even if the government asserted the existence of such changed circumstances, its interest in denying a pre-deprivation hearing to prove that claim is negligible, particularly because custody hearings are a routine practice for immigration courts. Compared to the "staggering" "costs to the public of immigration detention," *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), "[t]he effort and cost required" of providing a hearing "is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). Thus, re-detention violates procedural Due Process where there has not been a pre-deprivation hearing establishing that changed circumstances justify re-detention.

71. If a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. As a result, many courts have ordered

a noncitizen's immediate release where their pre-detention due process rights have been violated especially given his status as an unaccompanied minor. *See, e.g., Tekbas v. LaRose,* 2025 WL 3769992 (S.D. Cal. 2025) (granting immediate release to petitioner who entered the US in 2023 and was released on his own recognizance the next day, but then was detained by ICE in October, 2025); *Cornejo v. Andrews,* 823 F. Supp. 3d at 1101 (granting immediate release to petitioner who entered the US in 2024 as an unaccompanied minor and was then detained at an ICE check-in on November 9, 2025).

b. Substantive Due Process

72. Substantive due process requires that all forms of civil detention, including immigration detention, bear a 'reasonable relation' to a non-punitive purpose." *A.F.A.M. v. Albarran*, No. 25-CV-10492-AMO, 2025 WL 3752190, at *4 (N.D. Cal. Dec. 22, 2025) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The Supreme Court has recognized that immigration detention only comports with Due Process when it furthers the government's goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (internal citations omitted). ICE detention violates substantive Due Process where it is not justified by flight risk or danger concerns. *See id.* "[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). *See Hernandez*, 872 F.3d at 994.

73. In cases involving re-detention, like that of Petitioner, the risk of a substantive Due Process violation is particularly acute. This is because the prior "[r]elease reflects a determination by the government that the noncitizen is *not* a danger to the community or a flight risk." *Saravia*, 280 F. Supp. 3d at 1176 (emphasis added). To comport with substantive Due Process, a re-detention must therefore "be based on evidence that the circumstances relevant to that original release decision have changed." *Id.* at 1196. Alternatively, when Respondents released Petitioner, they determined that Petitioner posed no risk of flight or danger to the community. *Garro Pinchi*, 2025 WL 3691938, at *2.

74. Here, Petitioner's re-detention violates substantive Due Process because it is not rationally related to any legitimate government purpose, including mitigating flight risk or danger.

75. In sum, Mr. Aguilar meets the *Matthews* factors. This is particularly clear where, as in the instant case, the government did not make an individualized assessment of flight risk. Upon arrest, Respondents did not make a flight assessment nor did they release him after confirming his pending application and prior ORR release approval status. Yet, Mr. Aguilar has been in detention for over two months now. Immediate release is appropriate because Respondents have not – and cannot – show that they conducted an individualized determination regarding Petitioner before or upon detaining him May 1, 2026 or that circumstances have changed to warrant detention.

E. Administrative Procedure Act

76. Under the APA, courts may set aside agency action that is arbitrary and capricious, contrary to constitutional right, or in excess of statutory authority. 5 U.S.C. § 706(2)(A)-(C).

77. To be reviewable under the APA, the challenged action must constitute final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

78. Respondents' decision to re-detain Petitioner constitutes final agency action because the re-detention marks the "consummation" of Respondents' decision-making process on the question of Petitioner's custody, and it is an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (internal citations omitted); *see also Garro Pinchi* v. *Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938, at *19 (N.D. Cal. Dec. 19, 2025); *Sanchez*, 2025 WL 2770629, at *4-5. Indeed, the "practical and legal effects of the agency action" are that Petitioner has been deprived of liberty with no end in sight. *Oregon Natural Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006).

79. Courts must "hold unlawful and set aside agency actions, findings and conclusions" that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (d) without observance of procedures required by law. 5 U.S.C. § 706(2).

80. Final agency action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted). Courts may not consider an agency's "impermissible post hoc rationalizations." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

81. Respondents' decision to re-detain Petitioner was arbitrary and capricious in violation of the APA because the agency failed to contemporaneously articulate any flight-risk or danger-based justifications for its decision. *See Garro Pinchi*, 2025 WL 3691938, at *19; *Aguilar-Perez v. LaRose*, No. 25-CV-3409-LL-DDL, 2026 WL 92045, at *5-6 (S.D. Cal. Jan. 13, 2026) ("Because Respondents revoked Petitioner's parole and detained her without any rational individualized fact-finding, Respondents acted arbitrarily and capriciously in violation of the APA.").

82. Further, the APA requires courts to "hold unlawful and set aside" final agency action that is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). ICE's decision to re-detain Petitioner without any individualized flight-risk or danger-based justification, is contrary to Petitioner's rights under the Due Process Clause of the Fifth Amendment as described above.

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CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) AND IMPLEMENTING REGULATIONS

83. Petitioner realleges and incorporates by reference each and every allegation contained above.

84. Petitioner was, at the time of arrest and detention by Respondents, *not* "seeking admission" to the United States. He was already residing in the United States. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

85. Because Petitioner was not "seeking admission," he is not lawfully detained under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is not lawful.

86. Rather, the proper statutory interpretation of the INA, consistent with decades of practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a.) Because Petitioner's detention should be governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b), to Petitioner is unlawful under the Immigration and Nationality Act.

SECOND CAUSE OF ACTION

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND THE IMMIGRATION AND NATIONALITY ACT

U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)

87. Petitioner realleges and incorporates by reference each and every allegation contained above.

88. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*,

533 U.S. at 690.

89. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

90. Petitioner is neither a flight risk nor a danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

91. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention weighs against the government both fiscally and administratively. Detaining a U-visa applicant is contrary to the government's historical purpose of creating U-visa to support and survivors to encourage them to report crimes and seek support.

92. Petitioner should have been detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether to detain him. However, because ICE arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2), the agency necessarily failed to exercise its discretion.

93. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due under the discretionary detention statute, violating both the statute itself and the Due Process Clause of the Constitution.

THIRD CAUSE OF ACTION

ICE'S DETENTION OF PETITIONER VIOLATES DUE PROCESS BECAUSE HE WAS RELEASED UNDER THE TVPRA

94. Petitioner realleges and incorporates by reference each and every allegation contained above.

95. The TVPRA, codified in 8 U.S.C. § 1232, governs the detention of unaccompanied minors encountered at the border. The statute provides that, in making

custody determinations, the government should consider "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A).

96. In releasing Petitioner to his mother, the government must have determined that he was neither a flight risk nor a danger to the community. *Saravia v. Sessions*, 280 F. Supp. 3d at 1176, 1178 ("[Immigration officials] may release the minor to a 'sponsor' ... so long as the minor is not dangerous ... Release [therefore] reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."), *aff'd* 905 F.3d 1137 (9th Cir. 2018). The TVPRA statutes further contemplate using the "least restrictive setting" regarding placement for minors in Department of Health and Human Services custody and placement for minors in DHS custody after turning 18 years old. *See* 8 U.S.C. § 1232(c)(2)(A)–(B).

97. Because Petitioner was detained by Respondents after being released under the TVPRA, his detention is a violation of his due process rights and is not the "least restrictive setting." *See, e.g., Cornejo,* 823 F. Supp. 3d 1085 at 1101.

FOURTH CAUSE OF ACTION

ICE'S DETENTION OF PETITIONER VIOLATES DUE PROCESS BECAUSE HE HAS A BONA FIDE U-VISA PETITION

98. Petitioner realleges and incorporates by reference each and every allegation contained above.

99. Petitioner has a protected liberty interest in their continued deferred action. When USCIS granted Petitioner deferred action, it "confer[ed] affirmative immigration relief." *Regents*, 591 U.S. at 18. "Approval of deferred action status means that ... no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S.471, 484 (1999). "Thus, a person with deferred action should neither be removed nor detained for immigration enforcement (removal) purposes." *ICWC*, 2026 WL 1455004 at*44. Here, the purpose of Petitioner's detention weighs against the government both fiscally and administratively. Detaining a U-visa applicant is contrary to

the government's historical purpose of creating U-visa to support and survivors to encourage them to report crimes and seek support.

100. Petitioner has pending bona fide U-visa and deferred action requests, and his detention without a pre-determination process is not only contrary to Respondents' own policy, but violative of Petitioner's due process. *Id.* Petitioner is a class member is *ICWC v. Noem*, which enjoined ICE from detaining survivors with pending T-visa, VAWA, or U-visa petitions. Therefore, Respondents' ongoing detention of Petitioner violates the *ICWC* injunction and Petitioner's due process rights.

101. Petitioner's detention weighs against the government both fiscally and administratively. Detaining a U-visa applicant is contrary to the government's historical purpose of creating U-visa to support survivors and encourage them to report crimes and seek support.

FIFTH CAUSE OF ACTION:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT,

5 U.S.C. § 706(2)(A)

102. Petitioner realleges and incorporates by reference each and every allegation contained above.

103. The Administrative Procedure Act prohibits agency action that is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2)(A). ICE officers' authority to conduct warrantless arrests is prescribed in 8 U.S.C. 1357(a)(2). That statute requires that officers have "reason to believe" a person is in the U.S. in violation of laws *and* "is likely to escape before a warrant can be obtained for his arrest." That assessment must be individualized.

104. Respondents did not conduct an individualized assessment of flight risk for Petitioner and Respondents did not have probable cause to believe he was likely to escape before a warrant could be obtained.

105. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a

difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

106. Respondents' decision to detain Petitioner and suddenly subject him to mandatory detention under Section 1225(b)(2) irrespective Petitioner's individual circumstances, is arbitrary and capricious and contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Mr. Aguilar requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Mr. Aguilar's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty.

d. Award Petitioner costs and reasonable attorneys' fees; and

e. Award Petitioner costs and reasonable attorneys' fees; and

f. Order such other relief as this Court may deem just and proper.

Respectfully submitted this 29th day of July, 2026.

By: *s/* Brisa Velazquez Oatis

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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2026, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the United States District Court – Southern District of California by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

/s/Andres Holguin-Flores

Attorney